

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

NATHEN W. BARTON,

CASE NO. 3:21-cv-05610-DGE

Plaintiff,

ORDER ON MOTION FOR LEAVE
TO FILE A DISPOSITIVE MOTION
(DKT. NO. 386)

JOE DELFGAUW et al.,

Defendant.

Before the Court is Plaintiff's Motion for Leave to File a Dispositive Motion (Dkt. No.

386) and Defendants' Opposition. (Dkt. No. 390.) Plaintiff previously filed numerous dispositive motions in this long-running TCPA litigation, including for summary judgment (Dkt. Nos. 122, 173, 181, 249, 251) and default (Dkt. Nos. 99, 327, 358, 368), all of which were denied or stricken. Now, Plaintiff seeks to dispose of the counterclaim for fraud against him, to "simplify and shorten the trial" that the parties are preparing for. (Dkt. No. 386 at 3.)

New information may justify such a motion. The parties recently submitted Joint Stipulated Facts (Dkt. No. 378) for trial. Those facts cast doubt on Defendants' ability to

1 continue pressing their counterclaim. The essence of Defendants' counterclaim is that Plaintiff
 2 Nathen Barton "provided a fake name when he provided his phone number on the website when
 3 opting in to receive information." (Dkt. No. 20 at 12.) Contrary to Plaintiff's assertion that he
 4 never opted-in to text messages, Counterclaimants argue he "affirmatively gave
 5 Counterclaimants and/or third parties consent to receive text messages and phone calls from
 6 Counterclaimants' and third party providers." (*Id.* at 14.) The parties agree the phone number
 7 (360) 910-1019 is the subject of the alleged opt-in and that at one point it belonged to an
 8 individual named Ivette Marquez. (*Compare e.g.*, Dkt. Nos. 173 at 19, 253 at 3.)
 9 Counterclaimants appear to argue that Plaintiff used Marquez's name and email address
 10 (ivettealfredomartinez@gmail.com) fraudulently to opt-in. (*See* Dkt. Nos. 253 at 13, 250-14 at
 11 33.) Defendant denies having access to the email account. (*See* Dkt. No. 173 at 5.)

12 But among the facts Defendants *stipulated* to are:¹

13 ¶4 During the times relevant to this lawsuit Joeseph Deflgauw and the entities
 14 under Joeseph Deflgauw's control simply assumed all the information submitted
 15 during the "opt in" process was correct, and they didn't take any actions to verify
 16 the accuracy of the "opt in" information submitted. Likewise, they took no steps
 17 to verify if the owner of the email address ivettealfredomartinez@gmail.com was
 18 the same person who had use of the phone number (360) 910 1019.

19 ¶7 Before Starter Home Investing Inc sent the seven text messages to (360)
 20 910-1019 on April 1, 2021, advertising goods or services from Degree Locate,
 21 Get Hope To Own, *credit-score-first.com*, *yourent2own.com*, Lawsuit Winning,
 22 Lions Gate Loans, Honest Loans, and Classes & Careers, entities Degree Locate,
 23 Get Hope To Own, *credit-score-first.com*, *yourent2own.com*, Lawsuit Winning,
 24 Lions Gate Loans, Honest Loans, and Classes & Careers, Starter Home Investing
 Inc. and Xanadu Marketing Inc. did not have the invitation or consent from
 Barton to do so.

1 Defendants previously admitted that "[t]here is no way to verify" the identity of an opt-in "short
 2 of contacting the number provided" and instead asserted that "[o]pt-ins are based on trust that the
 3 person opting-in is honest and genuine and not musing federal law to obtain profit" (Dkt. No.
 4 250-14 at 28), calling into question their ability to substantiate their identity fraud theory.

1 (Dkt. No. 378 at 2.)

2 The Court will allow Plaintiff the opportunity to explain, in light of these stipulations or
3 admissions, what if any genuine issues of material fact remain for a jury to hear—and for
4 Defendants/Counterclaimants to respond. *See* Fed. R. Civ. Pro. 56(a). Plaintiff is directed to do
5 so in the most concise and focused manner possible. Within those guidelines, the motion for
6 leave to file a dispositive motion is GRANTED and limited to Defendants' fraud counterclaim.

7 Plaintiff SHALL file their dispositive motion no later than September 16, 2024.

8

9 Dated this 3rd day of September, 2024.

10

11 

12 David G. Estudillo
13 United States District Judge

14

15

16

17

18

19

20

21

22

23

24